

HIPAA: ADDITIONAL CONSIDERATIONS

Issues

- Unfunded mandate for all parties
- Requires policy and technical solutions
- Standards will continue to evolve
- Resistance and expectation of extended timelines is hampering some efforts
- Current federal concerns unlikely to make this a priority in the near term

Collaboration

- HIPAA is not just a system “fix”, but an opportunity to evaluate current systems and processes (business reengineering)
- Many using as a chance to upgrade, modernize, streamline
- Think outside the box for new approaches, sharing solutions, new partnerships
- Example of alternatives to a “system fix”:
 - Turn over to another agency
 - Partner with another agency for processing
 - Discontinue program
 - Purchase translator software
 - Develop centralized processing capacity

Collaborative Benefits

- Too big for any one individual or organization to do alone
- Builds networks and relationships between:
 - Public, private, non-profit health organizations
 - Local, state and federal agencies
 - Payers, providers, and patients
 - Government agencies and national organizations
 - Across geographic boundaries
- Sets collaborative and process improvement models

Possible Collaborations

- Workgroups among peer organizations or across county organizations
- Build models/templates to share:
 - Consents and authorizations

- Privacy notices
- Privacy and security policies and procedures
- Business partner agreements
- Share ideas, solutions, education and training
- Forums for discussing relevant issues

Business Partner Contracts

Issues:

- Many working relationships will require adherence to all or part of the HIPAA privacy and security requirements
- May require new contractual relationships
- Contracts will have new language about transactions, and security and privacy safeguards
- Business partners must have security and privacy policies in place
- Required to address contractor non-compliance and mitigation of harm

Required terms:

- BP will not use/disclose; liable if breach
- Implement/maintain appropriate safeguards
- Report any violations, sanction employees, CE must mitigate any known harmful effects
- Agents/subcontractors must agree to same restrictions
- Make information available as required by CE
- Make policies/procedures/records available to HHS to determine CE compliance
- Must return/destroy all information on termination
- Incorporate amendments/corrections when notified by CE
- Provide for accounting of uses/disclosures as requested by CE
- CE may terminate if BP violates terms; must terminate if cannot correct
- Must provide comparable security for all data electronically exchanged between BP and CE
- Implement and maintain (and require all agents/subcontractors to do same) appropriate and effective safeguards to protect security/confidentiality of electronic data

Optional terms:

- May use information for management/admin, legal responsibilities; may disclose if required by law or reasonable assurances recipient will protect information and not use/disclose except for above purposes
- May use to provide data aggregation services for CE
- Indemnification
- Insurance
- Audit
- No third party beneficiaries unless required by law
- BP must comply with CE notice of privacy practices

Indirect Impacts

- Not limited to health care payers and providers (health care suppliers, alternative providers, billing firms, medical transcriptionists, etc.)
- Compliance may be driven by business need even if no legal requirement
- Many indirect impacts anticipated for programs where:
 - collecting data from covered transactions
 - using Medicaid/Medicare data or systems
 - interfacing with HIPAA-compliant systems or partners
- Many health information reporting systems (public health, oversight, others) may see changes in the data as a result of HIPAA standards
- May be impacts on privacy and security on secondary data users

Latest Regulation Schedule

Expected this year:

- Employer identifier rule finalized
- Two new draft regulations revising the Transaction Standards (J codes, DSMO changes)
- A new draft privacy regulation to address areas of concern

Expected early next year:

- Final security rule
- Claims attachment draft